

1 SENATE BILL 355

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR THE EQUAL OPPORTUNITY  
12 SCHOLARSHIP TAX CREDIT FOR CONTRIBUTIONS MADE TO CERTAIN  
13 ORGANIZATIONS FOR SCHOLARSHIPS FOR LOW-INCOME STUDENTS IN  
14 NONPUBLIC SCHOOLS.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. A new section of the Income Tax Act is enacted  
18 to read:

19 "[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX  
20 CREDIT.--

21 A. A taxpayer who files an individual New Mexico  
22 income tax return and is not a dependent of another taxpayer  
23 may claim a credit for a contribution made to a scholarship  
24 granting organization for educational scholarships for eligible  
25 students at a qualified school. The credit may be claimed in

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1 an amount equal to the total contributions made during the  
2 taxable year for which the credit is claimed, but shall not  
3 exceed five hundred dollars (\$500) in a taxable year for an  
4 individual or one thousand dollars (\$1,000) for a married  
5 couple filing jointly. The credit provided by this section  
6 shall be known as the "equal opportunity scholarship tax  
7 credit".

8 B. A taxpayer may receive a credit pursuant to this  
9 section only if the taxpayer has a receipt from the scholarship  
10 granting organization certifying that the taxpayer's  
11 contribution will be used for educational scholarships for  
12 eligible students at a qualified school and that the taxpayer  
13 has not designated an individual student as the intended  
14 beneficiary of the contribution.

15 C. A husband and wife who file separate returns for  
16 a taxable year in which they could have filed a joint return  
17 may each claim only one-half of the equal opportunity  
18 scholarship tax credit that would have been allowed on a joint  
19 return.

20 D. The equal opportunity scholarship tax credit  
21 shall not be allowed for a contribution that is included in the  
22 taxpayer's itemized deductions, as defined in Section 63 of the  
23 Internal Revenue Code, for the taxable year.

24 E. The equal opportunity scholarship tax credit  
25 provided in this section may only be deducted from the

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1 taxpayer's New Mexico income tax liability for the taxable year  
2 in which the contribution is made.

3 F. A scholarship granting organization shall:

4 (1) notify the department of its intent to  
5 provide educational scholarships to eligible students attending  
6 qualified schools;

7 (2) demonstrate to the department that it has  
8 been granted an exemption from the federal income tax pursuant  
9 to Section 501(c)(3) of the Internal Revenue Code;

10 (3) provide a department-approved receipt to  
11 taxpayers for contributions made to the organization;

12 (4) ensure that at least ninety percent of its  
13 revenue from contributions is spent on educational  
14 scholarships, and that all revenue from interest or investments  
15 is spent on educational scholarships;

16 (5) cooperate with the public education  
17 department to conduct criminal background checks on all of its  
18 employees and board members and exclude from employment or  
19 governance any individual who might reasonably pose a risk to  
20 the appropriate use of contributed funds;

21 (6) ensure that educational scholarships are  
22 portable during the school year and can be used at any  
23 qualified school that accepts an eligible student according to  
24 a parent's wishes. If an eligible student moves to a new  
25 qualified school during a school year, the educational

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1 scholarship amount may be prorated;

2 (7) demonstrate its financial accountability  
3 by submitting a financial information report for the  
4 organization that complies with uniform financial accounting  
5 standards established by the department;

6 (8) ensure that a qualified school that  
7 accepts its educational scholarships will:

8 (a) comply with all health and safety  
9 laws or codes that apply to nonpublic schools;

10 (b) hold a valid occupancy permit if  
11 required by its municipality;

12 (c) certify that it will not  
13 discriminate in admissions on the basis of race, national  
14 origin or ethnicity; and

15 (d) provide academic accountability to  
16 parents of the students in the program by regularly reporting  
17 to the parents on the student's progress;

18 (9) not provide educational scholarships for  
19 qualified students to attend any school with paid staff or  
20 board members, or relatives thereof, in common with the  
21 scholarship granting organization;

22 (10) publicly report to the department by June  
23 1 of each year the following information regarding its  
24 educational scholarships for the previous calendar year:

25 (a) the name and address of the

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1 scholarship granting organization;

2 (b) the total number and total dollar  
3 amount of contributions received during the previous calendar  
4 year; and

5 (c) the total number and total dollar  
6 amount of educational scholarships awarded during the previous  
7 calendar year; and

8 (11) provide educational scholarships to more  
9 than one qualified school.

10 G. The department shall:

11 (1) adopt rules as necessary to implement  
12 equal opportunity scholarship tax credits;

13 (2) provide a standardized format for a  
14 receipt to be issued by a scholarship granting organization to  
15 a taxpayer to indicate the value of a contribution received.  
16 The department may require a taxpayer to provide a copy of this  
17 receipt when claiming an equal opportunity scholarship tax  
18 credit;

19 (3) provide a standardized format for  
20 scholarship granting organizations to report the information  
21 required pursuant to Paragraph (10) of Subsection F of this  
22 section;

23 (4) have the authority to conduct either a  
24 financial review or audit of a scholarship granting  
25 organization if possessing evidence of fraud; and

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1 (5) bar a scholarship granting organization  
2 from participating in the program if the department establishes  
3 that the scholarship granting organization has intentionally  
4 and substantially failed to comply with the requirements set  
5 forth in Subsection F of this section. If the department  
6 decides to bar a scholarship granting organization from the  
7 program, it shall notify affected scholarship students and  
8 their parents of this decision as quickly as possible.

9 H. All qualified schools shall:

10 (1) operate in New Mexico;

11 (2) comply with all state laws that apply to  
12 nonpublic schools regarding criminal background checks for  
13 employees and exclude from employment any person not permitted  
14 by state law to work in a nonpublic school; and

15 (3) fill available spaces by a random  
16 selection process, except that a qualified school may give  
17 preference to siblings of enrolled students and previously  
18 enrolled scholarship students, if a qualified school has more  
19 eligible students applying than spaces available.

20 I. As used in this section:

21 (1) "educational scholarships" means grants to  
22 eligible students to cover all or part of the tuition and fees  
23 at a qualified school;

24 (2) "eligible student" means a student who:

25 (a) is a member of a household whose

1 total annual income does not exceed an amount used to qualify  
2 for a reduced-price lunch through the federal school lunch  
3 programs established pursuant to 42 USCA Sections 1751 through  
4 1770, as amended. Once a student receives a scholarship  
5 pursuant to the program, the student shall remain eligible  
6 regardless of household income until the student graduates from  
7 high school or reaches twenty-one years of age; and

8 (b) resides in New Mexico while  
9 receiving a scholarship from a scholarship granting  
10 organization;

11 (3) "qualified school" means an accredited  
12 nonpublic elementary or secondary school in New Mexico that:

13 (a) does not discriminate in admissions  
14 or treatment of students on the basis of a student's race,  
15 national origin or ethnicity;

16 (b) demonstrates to the department that  
17 it has been granted exemption from the federal income tax as an  
18 organization qualified pursuant to Section 501(c)(3) of the  
19 Internal Revenue Code;

20 (c) requires students to take an annual  
21 academic test with individual scores provided to the parents of  
22 students; and

23 (d) satisfies the requirements set forth  
24 in Subsection H of this section; and

25 (4) "scholarship granting organization" means

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1 an organization that:

2 (a) demonstrates to the department that  
3 it has been granted exemption from the federal income tax as an  
4 organization qualified pursuant to Section 501(c)(3) of the  
5 Internal Revenue Code;

6 (b) provides financial assistance for  
7 the education of children in the form of educational  
8 scholarships to eligible students allowing them to attend any  
9 qualified school of their parents' choice;

10 (c) expends at least ninety percent of  
11 its equal opportunity scholarship tax credit qualifying  
12 contributions for educational scholarships for children  
13 enrolled in qualified schools;

14 (d) provides one hundred percent of its  
15 educational scholarships to children who at the time of initial  
16 application for the scholarship qualify for free or reduced-  
17 price lunches through the federal school lunch programs  
18 established pursuant to 42 USCA Sections 1751 through 1770, as  
19 amended; and

20 (e) satisfies the requirements set forth  
21 in Subsection F of this section."

22 Section 2. A new section of the Corporate Income and  
23 Franchise Tax Act is enacted to read:

24 "[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX  
25 CREDIT.--

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1           A. A taxpayer that files a New Mexico corporate  
2 income tax return may claim a credit for a contribution made to  
3 a scholarship granting organization for educational  
4 scholarships for eligible students at qualified schools. The  
5 credit may be claimed in an amount equal to the total  
6 contributions made during the taxable year for which the credit  
7 is claimed, but shall not exceed fifty thousand dollars  
8 (\$50,000) in a taxable year. The credit provided by this  
9 section shall be known as the "equal opportunity scholarship  
10 tax credit".

11           B. A taxpayer may receive a credit pursuant to this  
12 section only if the taxpayer has a receipt from the scholarship  
13 granting organization certifying that the taxpayer's  
14 contribution will be used for educational scholarships for  
15 eligible students at qualified schools and that the taxpayer  
16 has not designated an individual student as the intended  
17 beneficiary of the contribution.

18           C. The equal opportunity scholarship tax credit  
19 shall not be allowed for a contribution that is included in a  
20 claim for a deduction or credit pursuant to the Internal  
21 Revenue Code.

22           D. The equal opportunity scholarship tax credit  
23 provided in this section may only be deducted from the  
24 taxpayer's New Mexico corporate income tax liability for the  
25 taxable year in which the contribution is made.

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- 1                   E. A scholarship granting organization shall:
- 2                   (1) notify the department of its intent to
- 3 provide educational scholarships to eligible students attending
- 4 qualified schools;
- 5                   (2) demonstrate to the department that it has
- 6 been granted an exemption from the federal income tax pursuant
- 7 to Section 501(c)(3) of the Internal Revenue Code;
- 8                   (3) provide a department-approved receipt to
- 9 taxpayers for contributions made to the organization;
- 10                  (4) ensure that at least ninety percent of its
- 11 revenue from contributions is spent on educational
- 12 scholarships, and that all revenue from interest or investments
- 13 is spent on educational scholarships;
- 14                  (5) cooperate with the public education
- 15 department to conduct criminal background checks on all of its
- 16 employees and board members and exclude from employment or
- 17 governance any individual who might reasonably pose a risk to
- 18 the appropriate use of contributed funds;
- 19                  (6) ensure that educational scholarships are
- 20 portable during the school year and can be used at any
- 21 qualified school that accepts an eligible student according to
- 22 a parent's wishes. If an eligible student moves to a new
- 23 qualified school during a school year, the educational
- 24 scholarship amount may be prorated;
- 25                  (7) demonstrate its financial accountability

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1 by submitting a financial information report for the  
2 organization that complies with uniform financial accounting  
3 standards established by the department;

4 (8) ensure that a qualified school that  
5 accepts its educational scholarships will:

6 (a) comply with all health and safety  
7 laws or codes that apply to nonpublic schools;

8 (b) hold a valid occupancy permit if  
9 required by its municipality;

10 (c) certify that it will not  
11 discriminate in admissions on the basis of race, national  
12 origin or ethnicity; and

13 (d) provide academic accountability to  
14 parents of the students in the program by regularly reporting  
15 to the parents on the student's progress;

16 (9) not provide educational scholarships for  
17 qualified students to attend any school with paid staff or  
18 board members, or relatives thereof, in common with the  
19 scholarship granting organization;

20 (10) publicly report to the department by June  
21 1 of each year the following information regarding its  
22 educational scholarships for the previous calendar year:

23 (a) the name and address of the  
24 scholarship granting organization;

25 (b) the total number and total dollar

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1 amount of contributions received during the previous calendar  
2 year; and

3 (c) the total number and total dollar  
4 amount of educational scholarships awarded during the previous  
5 calendar year; and

6 (11) provide educational scholarships to more  
7 than one qualified school.

8 F. The department shall:

9 (1) adopt rules as necessary to implement  
10 equal opportunity scholarship tax credits;

11 (2) provide a standardized format for a  
12 receipt to be issued by a scholarship granting organization to  
13 a taxpayer to indicate the value of a contribution received.

14 The department may require a taxpayer to provide a copy of this  
15 receipt when claiming an equal opportunity scholarship tax  
16 credit;

17 (3) provide a standardized format for  
18 scholarship granting organizations to report the information  
19 required pursuant to Paragraph (10) of Subsection E of this  
20 section;

21 (4) have the authority to conduct either a  
22 financial review or audit of a scholarship granting  
23 organization if possessing evidence of fraud; and

24 (5) bar a scholarship granting organization  
25 from participating in the program if the department establishes

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1 that the scholarship granting organization has intentionally  
2 and substantially failed to comply with the requirements set  
3 forth in Subsection E of this section. If the department  
4 decides to bar a scholarship granting organization from the  
5 program, it shall notify affected scholarship students and  
6 their parents of this decision as quickly as possible.

7 G. All qualified schools shall:

- 8 (1) operate in New Mexico;
- 9 (2) comply with all state laws that apply to  
10 nonpublic schools regarding criminal background checks for  
11 employees and exclude from employment any person not permitted  
12 by state law to work in a nonpublic school; and
- 13 (3) fill available spaces by a random  
14 selection process, except that a qualified school may give  
15 preference to siblings of enrolled students and previously  
16 enrolled scholarship students, if a qualified school has more  
17 eligible students applying than spaces available.

18 H. As used in this section:

- 19 (1) "educational scholarships" means grants to  
20 eligible students to cover all or part of the tuition and fees  
21 at a qualified school;
- 22 (2) "eligible student" means a student who:
- 23 (a) is a member of a household whose  
24 total annual income does not exceed an amount used to qualify  
25 for a reduced-price lunch through the federal school lunch

1 programs established pursuant to 42 USCA Sections 1751 through  
2 1770, as amended. Once a student receives a scholarship  
3 pursuant to the program, the student will remain eligible  
4 regardless of household income until the student graduates from  
5 high school or reaches twenty-one years of age; and

6 (b) resides in New Mexico while  
7 receiving a scholarship from a scholarship granting  
8 organization;

9 (3) "qualified school" means an accredited  
10 nonpublic elementary or secondary school in New Mexico that:

11 (a) does not discriminate in admissions  
12 or treatment of students on the basis of a student's race,  
13 national origin or ethnicity;

14 (b) demonstrates to the department that  
15 it has been granted exemption from the federal income tax as an  
16 organization qualified pursuant to Section 501(c)(3) of the  
17 Internal Revenue Code;

18 (c) requires students to take an annual  
19 academic test with individual scores provided to the parents of  
20 students; and

21 (d) satisfies the requirements set forth  
22 in Subsection G of this section; and

23 (4) "scholarship granting organization" means  
24 an organization that:

25 (a) demonstrates to the department that

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1 it has been granted exemption from the federal income tax as an  
2 organization qualified pursuant to Section 501(c)(3) of the  
3 Internal Revenue Code;

4 (b) provides financial assistance for  
5 the education of children in the form of educational  
6 scholarships or tuition grants to eligible students allowing  
7 them to attend any qualified school of their parents' choice;

8 (c) expends at least ninety percent of  
9 its equal opportunity scholarship tax credit qualifying  
10 contributions for educational scholarships or tuition grants  
11 for children enrolled in a qualified school;

12 (d) provides one hundred percent of its  
13 educational scholarships to children who at the time of initial  
14 application for the scholarship qualify for free or reduced-  
15 price lunches through the federal school lunch programs  
16 established pursuant to 42 USCA Sections 1751 through 1770, as  
17 amended; and

18 (e) satisfies the requirements set forth  
19 in Subsection E of this section."

20 Section 3. APPLICABILITY.--The provisions of this act  
21 apply to taxable years beginning on or after January 1, 2010,  
22 but before January 1, 2014.